

ATTACHMENT 14

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

**IN THE MATTER OF THE
COMPLAINT OF CLOSECALL
AMERICA, INC. v. VERIZON
MARYLAND INC.**

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CASE NO. 8927

SURREBUTTAL TESTIMONY

OF

Thomas E. Mazerski

**ON BEHALF OF
CLOSECALL AMERICA, INC.**

October 22, 2002

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Thomas E. Mazerski; my business address is 101A Log
3 Canoe Circle, Stevensville, Maryland 21666.

4

5 Q. DID YOU FILE DIRECT TESTIMONY IN THIS CASE?

6 A. Yes.

7

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9 A. I will rebut the testimony of Verizon witnesses Richard Terry Charlton,
10 Rosemarie Clayton, Richard J. McCusker, Jr. and William E. Taylor. I will
11 also briefly comment on the testimony of Sherry Lichtenberg who filed
12 testimony on behalf of WorldCom.

13

14 Q. PLEASE PROVIDE AN OVERVIEW OF YOUR SURREBUTTAL
15 TESTIMONY.

16 A. My surrebuttal testimony will respond to the rebuttal testimony filed on
17 behalf of Verizon Maryland, Inc. ("Verizon"). My Testimony will highlight
18 specific statements and admissions made by Verizon's witnesses which
19 validate CloseCall's complaint that Verizon is improperly using its local
20 market power to minimize competition in the Maryland local exchange
21 telephone market and to block CloseCall's entry. In addition, I will provide
22 additional information regarding Verizon's anticompetitive practices
23 associated with its provision of local telephone service in Maryland.

1 These practices involve Verizon's illegal tying of voice messaging and
2 Line Sharing DSL services to its local telephone service in a manner that
3 is specifically intended to harm competing providers of local telephone
4 service, which Mr. Taylor admits is a potential antitrust violation. These
5 anticompetitive practices inflict unnecessary monetary hardship on
6 competitive providers of local telephone service, including CloseCall,
7 artificially reducing local competition and protecting Verizon's local
8 telephone service monopoly. In addition, these anticompetitive practices
9 cause direct harm to residential consumers and small businesses by
10 precluding their opportunity to choose and obtain the service and price
11 benefits of local competition.

12

13 In addition, I will discuss the specific anticompetitive tactics underlying the
14 practices that are employed by Verizon that cause substantial harm to
15 CloseCall, other competitive local service providers, and residential
16 consumers and small businesses. First, I will discuss Verizon's arbitrary
17 cancellation of voice messaging services, without prior notice or
18 authorization, for customers that switch to a different provider of local
19 telephone service. Second, I will discuss Verizon's blocking of CloseCall's
20 effort to fulfill orders for local telephone service that come from customers
21 who subscribe to Verizon's high speed Internet access (Line Sharing DSL)
22 services. Similar to the manner in which Verizon "ties-in" its local
23 telephone with voice messaging services, this practice traps residential

1 and small business customers by blocking their efforts to choose and
2 obtain local telephone service from CloseCall so long as they subscribe to
3 Verizon's high speed Internet service using Line Sharing DSL. Any
4 customer obtaining Verizon Line Sharing DSL under an annual plan is
5 "trapped" into Verizon's local telephone service for the duration of that
6 plan - meaning that Verizon can guarantee that each Verizon Online
7 customer that agrees to an annual contract will have no choice but to pay
8 for Verizon's local telephone service for at least one full year. Even
9 though this policy imposes a substantial restriction on each affected
10 customer's right to do business with Verizon's competitors, Verizon does
11 not appear to notify its customers that their decision to buy Verizon's high-
12 speed services means that they will lose their ability to select the local
13 telephone service provider of their choice. It appears that most customers
14 only learn this fact when their order for competitive local telephone service
15 is declined because Verizon has unilaterally suspended their right to
16 select the local carrier of their choice. CloseCall looked at Verizon's local
17 service tariff 202 and there is no mention of an annual subscription. In
18 addition, CloseCall reviewed Verizon's advertisements and Internet pages
19 and again found no mention of an annual commitment to local service.
20 Perhaps Verizon has buried this provision somewhere in its high speed
21 Internet access (Line Sharing DSL) service contract in order to avoid
22 Commission scrutiny of this annual local service commitment requirement,
23 and to prevent CloseCall and other interested parties from commenting on

1 this practice. Regardless, this practice is unfair to customers and
2 competitors, causes unnecessary customer confusion, limits customer
3 choice, is unreasonably discriminatory, unjustifiably harms CloseCall's
4 reputation and customer acquisition efforts, and is generally punitive to
5 Maryland's consumers and small businesses.

6
7 Third, Verizon has admitted to entering into "secret" agreements under
8 which Verizon grants special treatment to certain competitive local
9 exchange carrier ("CLECs"), enabling those CLECs to provide resold
10 Verizon local service to residential consumer and small businesses that
11 also subscribe to Verizon voice messaging and/or Line Sharing DSL
12 services. This special treatment is grossly anticompetitive and constitutes
13 unfair and potentially illegal discrimination against other CLECs operating
14 in Maryland, including CloseCall, whom Verizon chooses not to protect
15 from its anticompetitive practice of tying voice messaging and/or Line
16 Sharing DSL to local telephone service. Specifically, Verizon excepts
17 local telephone service orders placed by certain CLECs from the local
18 service "tying" practices that Verizon otherwise applies to local services
19 being offered by other CLECs to the same customers. This practice
20 allows Verizon to "orchestrate" the local telephone market in Maryland by
21 unilaterally deciding which CLEC can compete for which customers. In
22 addition to being unfair and anticompetitive, this practice causes customer
23 confusion, limits customer choice, is unreasonably discriminatory,

1 tarnishes CloseCall's reputation, constrains CloseCall's ability to do
2 business, and is punitive to customers seeking to exercise their right to do
3 business with the carriers of their choice.

4

5 Q. HOW WILL YOUR TESTIMONY BE ORGANIZED?

6 A. I will respond the testimony of Verizon's witnesses one at a time. First, I
7 will rebut the testimony of Richard Terry Charlton. Next, I will rebut the
8 testimony of Rosemarie Clayton. I will then rebut the testimony of Richard
9 J. McCusker, Jr. Finally, I will rebut the testimony of William E. Taylor. In
10 addition, I will briefly comment on the testimony of Sherry Lichtenberg who
11 filed testimony on behalf of WorldCom.

12

13 Q. DO YOU HAVE ANY SPECIAL QUALIFICATIONS THAT REFLECT
14 UPON YOUR ABILITY TO REBUT THE TESTIMONY OF WILLIAM
15 TAYLOR?

16 Yes. I have an advanced degree in economics and have taught both
17 microeconomics and macroeconomics as a member of the adjunct faculty
18 at the University of Baltimore. I have 20 years of practical experience at
19 Verizon, in which capacity I was directly involved with local carrier
20 interconnection issues and Verizon's marketing and strategic planning
21 groups. In addition, I have more than three years of practical experience
22 establishing and running a new local telephone company that competes

1 with Verizon to provide telephone service to residential and small business
2 telephone customers in Maryland.

3
4 **I. Mr. Richard Terry Charlton**

5
6 Q. DO YOU PERCEIVE THAT MR. CHARLTON IS APPROPRIATELY
7 QUALIFIED AND SUFFICIENTLY FAMILIAR WITH THE FACTS
8 PERTINENT TO CLOSECALL'S COMPLAINT TO PROVIDE CREDIBLE
9 TESTIMONY IN THIS PROCEEDING?

10 A. No. Mr. Charlton is not CloseCall's contact for problem resolution or
11 escalation, and he appears to lack awareness of important facts affecting
12 this matter. Consequently, it is somewhat surprising that Verizon has
13 chosen to submit Mr. Charlton's testimony rather than the testimony of
14 Mary Maher or Julius Bradley, the Verizon account managers assigned to
15 CloseCall, and with whom CloseCall has been specifically instructed to
16 interact.

17
18 Q. AS IT RELATES TO VERIZON'S MISHANDLING OF CLOSECALL'S
19 LOCAL TELEPHONE SERVICE ORDERS, DO YOU AGREE WITH MR.
20 CHARLTON THAT "CLOSECALL HAS NEVER BEFORE VOICED
21 CONCERNS ABOUT VERIZON'S PRACTICES THROUGH ANY OF THE
22 WELL-ESTABLISHED CHANNELS FOR RESOLVING SUCH ISSUES"?

1 A. No. Before filing its Complaint with the Commission, CloseCall thoroughly
2 documented the problems caused by Verizon's anticompetitive restrictions
3 on its voice messaging services and utilized all appropriate Verizon
4 problem resolution processes and escalation channels. These concerns
5 were communicated to Mary Maher or Julius Bradley, the Verizon account
6 managers assigned to CloseCall, and with whom CloseCall has been
7 specifically instructed to interact. Mr. Charlton is not CloseCall's contact
8 for problem resolution or escalation, and thus he is unqualified to testify on
9 the important facts affecting this matter.

10

11 Q. DO YOU AGREE WITH MR. CHARLTON THAT "VERIZON HAS A WELL
12 DEFINED PROCESS FOR SMOOTHLY TRANSITIONING CUSTOMERS
13 WITH VOICE MESSAGING WHO HAVE OPTED TO PURCHASE THEIR
14 LOCAL EXCHANGE SERVICE FROM A CLEC?"

15 A. No. The process is neither smooth nor well defined, especially from the
16 customer's perspective. Rather, Verizon's process is very disruptive. The
17 disruption appears to be related to Verizon's order processing flow, in that
18 when Verizon switches a customer's local telephone service to CloseCall,
19 it automatically terminates the customer's voice mail service, and may or
20 may not terminate the associated call-forwarding functionality, disrupting
21 the customer's telephone service. Verizon performs these additional
22 steps without approval from or notice to affected customers. As Mr.
23 Charlton admits, Verizon's ordering process was intentionally designed in

1 a manner that causes such service interruptions to occur to specific
2 categories of customers.

3
4 In this manner, Verizon frustrates and punishes customers that switch
5 their local exchange service to CloseCall by disconnecting their Verizon
6 voice mail service without customer notice or permission. I understand
7 that a utility may only make a unilateral decision to discontinue or
8 terminate service where there is a hazardous condition, if there would
9 otherwise be an adverse effect on service, if a customer is tampering with
10 or obtaining unauthorized access to a service, if a customer is using a
11 service illegally, or if the customer fails to pay for the service for a specific
12 period of time. The arbitrary, discriminatory and punitive nature of this
13 disconnection is particularly apparent in light of Verizon's special deals
14 under which Verizon will continue to provide, without disruption, voice mail
15 service to the customers of certain CLECs, placing CloseCall at an even
16 larger disadvantage in its attempt to compete for local telephone
17 customers.

18
19 Q. IN REFERENCE TO THE SITUATION IN WHICH VERIZON DISRUPTS A
20 CUSTOMER'S TELEPHONE SERVICE BY TERMINATING A
21 CUSTOMER'S VOICE MESSAGING SERVICE BUT NOT THE
22 ASSOCIATED CALL FORWARDING FUNCTIONALITY, DO YOU AGREE

1 WITH MR. CHARLTON'S TESTIMONY THAT "99.9% OF THE TIME THIS
2 PROBLEM HAS NOT OCCURRED?"

3 A. No. Mr. Charlton's testimony is factually wrong and intentionally
4 misleading. Mr. Charlton chooses to ignore CloseCall's clear description
5 of the 13 recorded sample customer problems and intentionally
6 mischaracterize these 13 instances as a statistically meaningful sampling
7 representing the impact of this problem. It is significant that Mr. Charlton,
8 who has had no direct experience with CloseCall's problems with Verizon,
9 fails to produce factually correct and well-reasoned arguments to rebut
10 CloseCall's Testimony, and instead attempts to mislead the Commission
11 by juxtaposing unrelated statistics and making clearly unsupportable
12 presumptions.

13
14 CloseCall has been very careful to make clear that the 13 documented
15 examples are not, or were ever intended to be, a statistically significant
16 measure of customer and competitive harm caused by Verizon's
17 propensity to terminate voice messaging functionality in a manner that
18 repeatedly causes customers to suffer telephone service interruptions.
19 They are nothing more than thirteen specific examples of customer
20 problems that arose between September 2000 and August 2002 and
21 which CloseCall selected for tracking and study purposes.
22

1 Furthermore, in late 2000, CloseCall stopped submitting to Verizon local
2 service orders for new customers that also had Verizon voice mail
3 because the service interruptions and other problems caused by Verizon's
4 refusal to continue voice messaging service and failure to properly
5 terminate such services was making a mess for customers and harming
6 CloseCall's reputation. This action by CloseCall was undertaken, in part,
7 to prevent any further examples of customer problems. CloseCall's
8 decision to stop submitting such orders to Verizon cost CloseCall
9 approximately 10.5% of its new customers. Perhaps Verizon would take a
10 different approach, but CloseCall believes that it has a responsibility to
11 deal with all customers in good faith and to protect customers from
12 potential problems, even if those problems are caused by Verizon's
13 practice of punishing customers that try to buy their local telephone
14 service from CloseCall. It would be a travesty to minimize the
15 anticompetitive impact of this problem because CloseCall has chosen to
16 respond affirmatively to and protect customers from unnecessary service
17 interruptions.

18
19 Further indicating that Verizon's rebuttal is unreasonable and intentionally
20 misleading, the 13 examples of service interruptions caused by Verizon's
21 unilateral termination of voice messaging service at Verizon's request
22 were submitted by CloseCall in response to Verizon's specific request on
23 discovery. The purpose of this submission was to illustrate how Verizon

1 had improperly disconnected the voice mail platform function for
2 customers switching to CloseCall's local telephone service, but left the call
3 forwarding feature on, causing these customers to experience service
4 disruptions. Nevertheless, Mr. Charlton attempts to compare this small,
5 illustrative collection of examples collected over a two-year period to the
6 total number of CloseCall local service customers (13,000) that, for the
7 most part, did not have Verizon voice mail when they switched to
8 CloseCall. The result is completely meaningless and constitutes nothing
9 more than a clumsy attempt to distort and misuse data for the purpose of
10 intentionally misleading the Commission. To calculate a statistically
11 relevant number, Mr. Charlton should have compared the number of
12 Verizon voice messaging customers that experienced service interruptions
13 relating to their decision to subscribe to CloseCall's local telephone
14 service to the number of Verizon voice messaging customers that did not
15 experience problems when switching to CloseCall during the same time
16 period. Instead, Mr. Charlton compares apples to oranges in order to give
17 the Commission the false impression that all is well.

18
19 Q. WHAT IS CLOSECALL'S EXPERIENCE WITH THESE TYPES OF
20 ERRORS?

21 A. In early 2000 CloseCall was experiencing nearly 100% error rates. The
22 affected customers were mostly family and friends that wanted to give
23 CloseCall their business and who also happened to have Verizon voice

1 mail service. In addition, for tracking purposes, in August 2002 CloseCall
2 sent Verizon three orders from customers that were switching their local
3 telephone services from Verizon to CloseCall. Each customer subscribed
4 to Verizon voice messaging service. CloseCall closely followed these
5 three orders. In each case, Verizon disconnected the voice mail but failed
6 to disconnect the call forwarding functionality. Clearly, contrary to Mr.
7 Charlton's flawed analysis, Verizon's refusal to continue to provide voice
8 messaging service to customers that switch to CloseCall local service,
9 combined with Verizon's failure to properly disconnect the service, is a
10 substantial and persistent problem.

11

12 Q. WHY DOES MR. CHARLTON FAIL TO SEE MANY ERRORS OF THIS
13 TYPE ASSOCIATED WITH CLOSECALL'S ORDERS?

14 A. Mr. Charlton has not seen many errors because CloseCall has established
15 a procedure to minimize the likelihood of such problems. Specifically,
16 CloseCall informs customers that if they switch to CloseCall's local
17 telephone services and they currently purchase Verizon voice mail,
18 Verizon will unilaterally terminate their voice mail service, potentially cause
19 telephone service disruptions, and will erase all of their saved messages,
20 features and functions. In his testimony, Mr. Charlton admits that all of
21 this is true. Unfortunately, upon learning how Verizon will punish them for
22 subscribing to CloseCall local service, approximately 10.5% of CloseCall's

1 new customers decide to remain with Verizon's local service and to cancel
2 their orders with CloseCall.

3

4 Q. DID CLOSECALL GIVE VERIZON SAMPLES OF CANCELLED
5 ORDERS?

6 A. Yes. CloseCall sent Verizon, at Verizon's request, actual copies of local
7 service order forms from new customers that had to cancel their orders.
8 These orders are from Verizon customers that wanted to switch to
9 CloseCall's local telephone service. CloseCall also sent to Verizon, at
10 their request, the study data that shows 10.5% of CloseCall's total orders
11 are cancelled due to Verizon's anti-competitive behavior.

12

13 Q. DOES MR. CHARLTON ADMIT THAT VERIZON TERMINATES THE
14 CUSTOMER'S VOICE MAIL SERVICE AND ERASES ALL OF THE
15 CUSTOMERS MESSAGES?

16 A. Yes. The only issue to which Mr. Charlton appears to take exception is
17 my use of the word "immediate," which he interprets in an unreasonable
18 manner. To be clear, my use of the word "immediate" was not intended to
19 imply that the very second a customer calls CloseCall to place an order for
20 local telephone service. Instead, it was intended to refer to the occasion
21 when Verizon executes the actual change from Verizon's local telephone
22 service to CloseCall's local telephone service. I believe that the word
23 "immediate" accurately describes Verizon's lack of delay between local

1 service transfer and the disconnection of voice messaging service.
2 Therefore, I stand by my statement that, "Verizon terminates the
3 customer's access to their voice messaging service immediately, without
4 warning, and without offering any alternative option for maintaining voice
5 messaging service except re-subscribing to Verizon's local telephone
6 service."
7

8 Q. WHY ARE THESE VOICE MESSAGING SERVICE ISSUES AND
9 DISRUPTIONS RELEVANT TO CLOSECALL'S ABILITY TO SELL
10 LOCAL TELEPHONE SERVICES IN MARYLAND?

11 A. As Mr. Charlton admits, Verizon terminates the voice messaging service it
12 provides to subscribing customers if the customer switches their local
13 service to CloseCall. Verizon also improperly executes this service
14 termination, leaving the call-forwarding functionality in place. Thus,
15 customers switching to CloseCall's local telephone service experience
16 service disruptions until CloseCall steps in to resolve the problem, which
17 can require escalating the matter within Verizon. Even then, it usually
18 takes a full day or two for Verizon to fix the problem. This situation causes
19 substantial harm to CloseCall. Customers that call Verizon to find out
20 what is going on are told that the only way they can restore their voice
21 mail service is to switch their local telephone service back to Verizon.
22 Furthermore, even though Verizon's internal policy and failure to properly
23 execute service terminations are the cause of these problems, customers

1 tend to associate the problems with their decision to do business with
2 CloseCall, unfairly harming CloseCall's reputation in the marketplace.

3

4 Q. SHOULD VERIZON BE RESPONSIBLE FOR MAINTAINING THE
5 EXISTING VOICE MAIL SERVICE OF CUSTOMERS THAT SWITCH
6 THEIR LOCAL TELEPHONE SERVICES TO CLOSECALL?

7 A. Yes. Verizon argues that voice messaging is an "unregulated" competitive
8 service that is not subject to the customer protection obligations that
9 attach to "regulated" basic local telephone services. Yet, in practice
10 Verizon will only provide voice messaging service in conjunction with
11 "regulated" local telephone service and treats a customer order to transfer
12 local telephone service to a competitive provider as a signal to terminate
13 voice message service.

14

15 Mr. Charlton and Verizon cannot have it both ways. Voice messaging is
16 either a separate, "unregulated" stand-alone service or it is an element of
17 "regulated" basic local telephone service in the same manner as call
18 waiting and caller-ID. Verizon holds itself out to Maryland residential
19 consumers and small businesses as a voice messaging service provider,
20 yet it automatically disconnects a customer's voice messaging service in
21 response to the customer's decision to change local telephone service
22 providers. This policy is internally inconsistent, anticompetitive and
23 punitive, and constitutes nothing more than a means by which Verizon is

1 attempting to prevent customers from switching their local telephone
2 service to competitive providers, such as CloseCall.

3
4 Q. MR. CHARLTON STATES THAT "MR. MAZERSKI SUGGESTS THAT
5 VERIZON ELIMINATES A CUSTOMER'S ACCESS TO HER VOICE
6 MESSAGING SERVICE ACCOUNT WHILE SHE IS STILL A VERIZON
7 CUSTOMER IN ORDER TO PUNISH THE CUSTOMER FOR
8 SWITCHING TO CLOSECALL." DO YOU AGREE WITH HIS
9 ASSERTIONS?

10 A. Yes. This is a major problem for CloseCall. When a customer switches
11 from Verizon to CloseCall's local telephone service, CloseCall only is
12 intending to submit to Verizon an order to switch the customer's basic
13 local telephone service. The customers with Verizon voice mail service
14 should remain Verizon customers for the "unregulated" voice mail service,
15 even after Verizon switches the "regulated" basic local telephone services
16 to CloseCall or another local carrier. Nevertheless, Verizon unilaterally
17 takes the punitive action of terminating the customer's voice mail service,
18 causing a disruption of service to the customer and harm to CloseCall's
19 business reputation. This is Verizon's strategy for "trapping" customers,
20 causing them to remain with Verizon's local telephone service and to buy
21 more of the "unregulated" voice mail services. This anti-competitive "tie-
22 in" strategy is central to CloseCall's Complaint.

1 At a minimum, Verizon should continue to service and bill these customers
2 separately for the voice mail service unless and until the customer cancels
3 the service or Verizon has a legitimate reason to terminate the service,
4 pursuant to the Commission's rules. Terminating a customer's voice mail
5 service just because the customer switched their local telephone services
6 to CloseCall is not consistent with the Commission's rules or the public
7 interest. Moreover, the inconvenience that such termination causes to
8 customers demonstrates the anticompetitive nature and punitive effect of
9 Verizon's tying of voice messaging to local telephone service.

10
11 Q. DO YOU AGREE WITH MR. CHARLTON THAT "CLOSECALL IS
12 BETTER SITUATED THAN VERIZON TO TELL THOSE CUSTOMERS
13 HOW TO PREPARE THEMSELVES FOR THE SHIFT AWAY FROM
14 VERIZON'S LOCAL SERVICE?"

15 A. No. CloseCall communicates with its customers about the transition from
16 Verizon's local telephone service to CloseCall's local telephone service.
17 Contrary to Mr. Charlton's views, however, Verizon remains responsible to
18 ensure that the voice mail services it provides are unaffected by the
19 change in local telephone service providers and that its voice messaging
20 services are not disrupted. Nevertheless, Verizon has chosen to tie voice
21 messaging and local telephone service in a manner that punishes
22 customers for dealing with Verizon's competitors. Verizon's sole purpose
23 for employing this strategy is to protect its local market share from erosion

1 due to competition. Pursuant to that objective, Verizon would prefer to
2 have customers associate Verizon's competitors with the inconveniences
3 caused by its policies. However, it is Verizon's policy to tie voice
4 messaging and local telephone service, not the policy of Verizon's
5 competitors. Consequently, Verizon should bear sole responsibility for
6 informing customers that it has chosen to tie these services, and should
7 be prohibited from arbitrarily disconnecting voice messaging services that
8 it has not informed of its service tying policy.

9
10 Q. WHEN CLOSECALL INFORMS RESIDENTIAL AND SMALL
11 BUSINESSES OF VERIZON'S PRACTICES IN SHUTTING-OFF THEIR
12 VOICE MAIL SERVICE WITHOUT NOTIFYING THEM, WHAT IS THE
13 CUSTOMERS' RESPONSE?

14 A. First, customers want to know why Verizon is permitted to behave this
15 way. We explain to them that we believe that this situation is wrong, that
16 we have filed a complaint with the Maryland Public Service Commission,
17 and that we are hopeful that this practice will soon end. Second, most, if
18 not all, the customers say "if I am going to encounter any service
19 disruptions, then never mind - I'll keep my services with Verizon."

20 Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN RESPONSE TO
21 VERIZON'S CONTINUED TERMINATION OF VOICE MAIL SERVICE
22 WITHOUT PERMISSION, PROPER REASON OR PRIOR NOTICE IN

1 RESPONSE TO A CUSTOMER'S DECISION TO OBTAIN THEIR BASIC
2 LOCAL TELEPHONE SERVICE FROM CLOSECALL?

3 A. To the extent Verizon continues to automatically terminate their
4 customers' voice mail service just because they switch their basic local
5 telephone services to a competitor such as CloseCall, the Commission
6 has no choice but to reclassify these "unregulated" voice mail services as
7 "regulated." This is the only action that would be consistent with Verizon's
8 decision to treat voice messaging and local telephone service as an
9 inseparable bundle, would end Verizon's discriminatory practices and
10 clearly establish the Commission's authority over this matter. Verizon has
11 clearly demonstrated that it is not willing to defer to the interests and
12 needs of Maryland's residential consumers and small businesses.
13 Verizon is also indicated that it is willing to use its ability to "trap" local
14 customers rather than to compete fairly for the provision of local telephone
15 services, regardless of how this strategy harms customers. This is blatant
16 abuse of Verizon's market power over a small company like CloseCall.
17 Essentially Verizon is putting up barriers to entry into the local telephone
18 market in Maryland with the intention of driving its competitors out of
19 business in order to protect its dominant market position.

20
21 Q. WHY DO YOU BELIEVE VERIZON IS PUTTING UP BARRIERS TO
22 ENTRY INTO THE LOCAL TELEPHONE MARKET AND IS

1 INTENTIONALLY TRYING TO DRIVE COMPETITIVE CARRIERS,
2 INCLUDING CLOSECALL, OUT OF BUSINESS?

3 A. Unless Verizon is selling the "unregulated" voice mail service below its
4 cost or using local telephone service to subsidize voice mail service,
5 Verizon's rational economic behavior would be to continue to provide
6 voice mail services to its customers that obtain "regulated" local telephone
7 service from Verizon's competitors. To the contrary, however, Verizon is
8 "tying" together the "unregulated" voice mail service and the "regulated"
9 local telephone service in a manner that is not economically rational, but
10 puts CloseCall at a competitive disadvantage. Specifically, Verizon's
11 strategy prevents CloseCall from competing for these customers and
12 causes CloseCall to lose revenues and profits. It also prevents
13 Maryland's residential consumers and small businesses from choosing to
14 buy their local telephone service from competitive providers, such as
15 CloseCall.

16

17 Q. CONTRARY TO MR. CHARLTON'S TESTIMONY, HAS CLOSECALL
18 ATTEMPTED TO RESOLVE THESE MATTERS WITH VERIZON?

19 A. Yes. Many times, through our designated Verizon contacts and problem
20 resolution and escalation procedures, CloseCall requested that Verizon
21 stop the practice of terminating voice mail service when customers switch
22 to CloseCall's local telephone service. As an alternative, CloseCall has
23 also asked Verizon to enable CloseCall to resell Verizon voice mail

1 services, as it has allowed other CLECs to do. Enabling CloseCall to
2 resell Verizon's voice services would put an end to the confusion and
3 frustration that customers now experience. Since CloseCall resells
4 Verizon voice mail service in Delaware, CloseCall has experience with this
5 process and knows that it works. CloseCall has also asked Verizon for
6 treatment equal to that which Verizon offered LightYear Communications
7 and other CLECs that can submit orders for local telephone service
8 without Verizon terminating their customer's voice mail service. Verizon
9 has refused to provide CloseCall with equivalent treatment, stating that
10 LightYear's and others deals are "special" and that these options are not
11 available to CloseCall.

12

13 Q. DO YOU AGREE WITH MR. CHARLTON THAT, "IF VERIZON
14 COMMUNICATED WITH CLOSECALL'S CUSTOMERS, CLOSECALL
15 WOULD SURELY ALLEGE THAT VERIZON WAS ENGAGING IN
16 ANTICOMPETITIVE CONDUCT TRYING TO WIN BACK ITS
17 CUSTOMERS THAT HAVE SIGNED UP WITH CLOSECALL?"

18 A. No. Verizon should be providing notice to customers before unilaterally
19 terminating their voice services. The anticompetitive conduct is Verizon's
20 termination of voice messaging service without notice or recourse just
21 because the customer switched their local telephone service to CloseCall.

22

1 Q. DO YOU AGREE WITH MR. CHARLTON THAT CLOSECALL HAS
2 FAILED TO BRING THIS PROBLEM TO VERIZON'S ATTENTION AND
3 THAT MR. CHARLTON AND OTHER VERIZON PERSONNEL ARE
4 WILLING TO DISCUSS THIS ISSUE WITH CLOSECALL AND TRY TO
5 WORK OUT AN APPROPRIATE SOLUTION?

6 No. As discussed above, CloseCall has documented communications
7 with Verizon personnel on the voice mail issues. In addition, CloseCall
8 filed its complaint with the Maryland Public Service Commission on May 2,
9 2002 and to date, CloseCall has not been contacted by anyone from
10 Verizon, including Mr. Charlton, who has attempted to resolve these
11 issues.

12

13 In fact, since CloseCall filed its complaint with the Maryland Commission,
14 Verizon appears to have become less responsive in its regular interactions
15 with CloseCall and has continued to act in a manner that is hostile to
16 CloseCall's business. For example, our wholesale monthly bills from
17 Verizon are continually inaccurate and behind schedule, making it difficult
18 and sometimes impossible for CloseCall to bill its customers for retail
19 services in an accurate and timely manner. In addition, CloseCall
20 currently has approximately \$325,000 in billing claims and disputed items
21 with Verizon. Many of these issues have surfaced since our May 2, 2002
22 complaint. While Verizon has not admitted that it is taking a more hostile
23 approach toward CloseCall, I cannot help noticing that Verizon appears to

1 be doing so. For instance, Verizon Wireless, a separate but related entity
2 from which CloseCall obtains wireless services for resale, recently notified
3 CloseCall that it will terminate the agreement under which we obtain
4 wireless services that we resell to our customers by November 1, 2002,
5 unless CloseCall meets certain new minimums and provides a letter of
6 credit of \$260,000. The terms of this demand are similar to the carrier
7 deposit requirements that Verizon is seeking to incorporate into its wireline
8 tariffs filed with the FCC. The FCC recently suspended Verizon's related
9 tariff revisions pending a five-month review of the new terms. Verizon's
10 sudden deposit requirement places CloseCall's ability to provide
11 uninterrupted service to its customers in jeopardy, as Verizon is liable to
12 simply disconnect CloseCall's wireless customers on November 1, 2002 if
13 it is not satisfied with CloseCall's ability to conform to the new security
14 requirement and meet new minimum requirements. Since CloseCall sells
15 both local and wireless service provided by Verizon in Maryland,
16 thousands of our customers will once again be subjected to service
17 disruptions caused by Verizon's anticompetitive practices and Verizon will
18 have succeeded in taking another step toward running CloseCall out of
19 business. This situation is unfolding rapidly, and documentation of
20 relevant communications between CloseCall and Verizon Wireless is
21 attached as Attachment A to this Surrebuttal.

1 In addition, Verizon simply refuses to comply with orders to switch local
2 service providers for customers subscribing to its Line Sharing DSL
3 services. This is yet another example of Verizon's anticompetitive practice
4 of "tying-in" its "unregulated," DSL and Internet access service with its
5 "regulated" local telephone service in a manner that forecloses CloseCall's
6 opportunity to compete to provide local telephone service.

7

8 Q. IN YOUR OPINION IS VERIZON INTENTIONALLY TRYING TO
9 STRONG-ARM CLOSECALL?

10 A. Clearly the pattern of Verizon using its market power to "tie-in" its
11 "unregulated" and "regulated" services for purposes of blocking
12 CloseCall's entry into the Maryland local telephone service market raises
13 serious questions that the Commission must now resolve. This behavior
14 certainly disproves Mr. Charlton's claim that he and others at Verizon are
15 trying to solve CloseCall's issues. In my opinion, Verizon is attempting to
16 put CloseCall out of business. Without the Commission's intervention, it
17 will become harder for CloseCall to compete with Verizon. The result
18 would be further erosion of the opportunity for Maryland residential
19 consumers and small businesses to choose their local telephone
20 company. Instead, these customers will remain trapped by Verizon's anti-
21 competitive behavior.

22

1 Q. SHOULD THE COMMISSION ORDER VERIZON TO STOP THE
2 PRACTICE OF TERMINATING VOICE MAIL SERVICE JUST BECAUSE
3 A RESIDENTIAL CONSUMER AND/OR SMALL BUSINESS HAS
4 SWITCHED THEIR LOCAL TELEPHONE SERVICE TO CLOSECALL?

5 A. Yes.

6

7 Q. SHOULD THE COMMISSION ORDER VERIZON TO STOP THE
8 DISCRIMINATING AND ATTEMPTING TO "ORCHESTRATE" THE
9 MARKET BY OFFERING SPECIAL DEALS AND TREATMENT TO
10 CERTAIN CLECS WITH REGARD TO THE PROVISION OF LOCAL
11 TELEPHONE SERVICE?

12 A. Yes.

13

14 Q. SHOULD THE COMMISSION ORDER VERIZON TO EXECUTE THE
15 TRANSFER OF RESIDENTIAL CONSUMER AND SMALL BUSINESS
16 CUSTOMERS THAT SUBSCRIBE TO VERIZON'S VOICE MESSAGING
17 SERVICE IN A SEAMLESS MANNER THAT DOES NOT CAUSE
18 SERVICE INTERRUPTIONS?

19 A. Yes.

20

21 Q. SHOULD THE COMMISSION ORDER VERIZON TO CONTINUE
22 PROVIDING VOICE MAIL SERVICE TO CUSTOMERS THAT SWITCH
23 THEIR LOCAL TELEPHONE SERVICE TO CLOSECALL?

1 A. Yes. The Commission should prohibit Verizon from tying its voice mail
2 service to local telephone service in a manner that denies access to its
3 voice messaging service to customers that switch their local telephone
4 service from Verizon to CloseCall.

5

6 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY OF MR.
7 RICHARD TERRY CHARLTON?

8 A. Yes.

9

10 **II. Ms. Rosemarie Clayton**

11

12 Q. DO YOU PERCEIVE THAT MS. CLAYTON IS APPROPRIATELY
13 QUALIFIED AND SUFFICIENTLY FAMILIAR WITH THE FACTS
14 PERTINENT TO CLOSECALL'S COMPLAINT TO PROVIDE CREDIBLE
15 TESTIMONY IN THIS PROCEEDING?

16 A. No. Ms. Clayton is not CloseCall's contact for problem resolution or
17 escalation, and appears to lack specific knowledge of CloseCall's prior
18 history with Verizon, the facts surrounding CloseCall's complaint, the
19 principles of financial and strategic management of a local
20 telecommunications business, and the legal and regulatory framework
21 supporting the industry.

22

1 Q. DO YOU AGREE WITH MS. CLAYTON THAT, "MR. MAZERSKI'S
2 TESTIMONY AND CLOSECALL'S COMPLAINT EVINCE A
3 MISUNDERSTANDING OF THE NATURE OF DSL SERVICE
4 GENERALLY AND OF VERIZON'S PRACTICES, PRODUCT
5 OFFERINGS AND POLICIES, MORE SPECIFICALLY?"

6 A. No. I, as an individual, and CloseCall as an entity fully understand the
7 nature of DSL service as well as Verizon's DSL service practices, product
8 offerings and policies. Ms. Clayton testimony is little more than a
9 reiteration of Verizon's anti-competitive practices and the policies that it
10 uses to block local market entry by competitors such as CloseCall.
11 Although it purports to do otherwise, Ms. Clayton's testimony affirms that
12 Verizon's policy is to reject outright any order to transfer local telephone
13 service that CloseCall sends to Verizon that relates to a customer that
14 subscribes to Verizon's Line Sharing DSL service on the same line. There
15 is no misunderstanding.

16

17 Q. DO YOU HAVE EVIDENCE THAT VERIZON BLOCKS SERVICE
18 PROVIDER CHANGE ORDERS RELATING TO LINES ON WHICH
19 VERIZON PROVIDES LINE SHARING DSL SERVICE?

20 A. Yes. Attachment B provides an example of the type of responses that we
21 get from Verizon in response to these orders:

22	<u>Accept/Reject</u>	Reject
23	<u>Error Code</u>	7020LN10

Error Description **LN SHARE EXISTS ON TN SPECIFIED; NOT
ELIGIBLE FOR MIGRATION – LSR IN QUERY”.**

Q. IN LAYMAN’S TERMS, WHAT DOES THIS RESPONSE MEAN?

A. The response indicates that Verizon is rejecting the order to transfer a customer’s local service to CloseCall because the customer requesting a change of local telephone service provider is subscribing to Verizon’s Line Sharing DSL. In particular, 7020LN10 is the Error Code corresponding to the order rejection and the Error Description is an abbreviation for the following statement: “Verizon is providing Line Sharing DSL on the specified Telephone Line; the Line is not eligible for migration to a competing local telephone service provider – Local Service Request inquiry.” Order rejections of this type do not reflect the existence of any reasonable condition that legitimately precludes a change of local service provider, such as an aberration affecting the specific network facilities serving the customer, but are solely caused by Verizon’s arbitrary decision to reject customer service provider change orders associated with its Line Sharing DSL customers. In other words, Verizon’s policy is to “trap,” without warning or notice, Maryland residential consumers and small businesses that subscribe to Line Sharing DSL by blocking their ability to have CloseCall (or any other competitive provider) as their local telephone company - despite the fact that they already ordered CloseCall’s local telephone service.

1

2 Q. IS THIS SIMILAR TO THE ANTICOMPETITIVE PRACTICE VERIZON IS
3 USING WITH VOICE MAIL CUSTOMERS?

4 A. Yes. The most significant difference is that, with regard to Line Sharing
5 DSL customers, Verizon blocks the local telephone service change order
6 from ever taking effect, rather than arbitrarily canceling the customer's
7 other services after the order has been fulfilled. In this case, rather than
8 an inexplicable service interruption, customers are inexplicably unable to
9 select a different local telephone service provider.

10

11 Q. WHAT IS CLOSECALL'S ESTIMATE OF THE AMOUNT OF BUSINESS
12 IT LOSES AS A RESULT OF VERIZON'S PRACTICE OF BLOCKING
13 CLOSECALL'S LOCAL SERVICE PROVIDER CHANGE ORDERS?

14 A. Yes. CloseCall estimates that 1.9% of its orders from customers
15 requesting that their local telephone service provider be switched from
16 Verizon to CloseCall are blocked by Verizon. CloseCall estimates that
17 Verizon's order blocking strategy has cost CloseCall approximately
18 \$200,000 in revenues to date. CloseCall expects that this revenue loss
19 will increase exponentially as additional customers sign up for Verizon's
20 high-speed Internet and Line Sharing DSL services and become
21 unwittingly trapped by Verizon's anticompetitive strategy of blocking local
22 telephone service provider change orders relating to these customers.

23

1 Q. DID CLOSECALL REPORT TO VERIZON ESTIMATE THAT 1.9% OF
2 CLOSECALL'S LOCAL TELEPHONE SERVICE ORDERS ARE
3 BLOCKED BY VERIZON?

4 A. Yes. CloseCall provided this information in Attachment A and Data
5 Request 1(1) in response to Verizon's data request.
6

7 Q. DO YOU AGREE WITH MS. CLAYTON'S STATEMENT "THAT
8 PERHAPS MR. MAZERSKI HAS CONFUSED VERIZON'S DSL
9 SERVICE, WHICH IS A RETAIL TELECOMMUNICATIONS SERVICE
10 THAT IS PROVIDED BY THE INCUMBENT LOCAL EXCHANGE
11 CARRIER ("ILEC") WITH HIGH SPEED INTERNET ACCESS SERVICE,
12 WHICH IS AN UNREGULATED, INTERSTATE INFORMATION SERVICE
13 THAT COMBINES HIGH SPEED DSL TRANSPORT WITH INTERNET
14 ACCESS?"

15 A. No. There is no confusion. The issue is not that complicated. Verizon
16 simply blocks CloseCall's local telephone orders specifically because
17 Verizon is selling a separate "unregulated" high speed Internet access
18 service (Line Sharing DSL) to the same customer. It is significant that Ms.
19 Clayton offers no reason or justification for Verizon's clearly documented
20 anti-competitive behavior, but merely argues that CloseCall is confused
21 about an insubstantial point. In this manner, Verizon again attempts to
22 distract the Commission by focusing on a distinction without a difference
23 rather than the substantive issues raised by CloseCall's Complaint.

1

2 Q. DO YOU AGREE WITH MS. CLAYTON THAT, "INSTEAD OF
3 DISCUSSING THE VARIOUS OPTIONS FOR PROVIDING RESOLD DSL
4 THROUGH ORDINARY BUSINESS CHANNELS, CLOSECALL HAS
5 APPARENTLY CHOSEN TO PURSUE UNNECESSARY LITIGATION
6 THAT BURDENS THIS COMMISSION AND ALL PARTIES INVOLVED?"

7 A. No. Just as in the voice mail situation, CloseCall has patiently followed
8 the problem resolution and escalation process set up by Verizon, but to no
9 avail. Since Ms. Clayton appears to lack first-hand knowledge of
10 CloseCall's interactions with Verizon, Ms. Clayton should have reviewed
11 her testimony with the account managers that Verizon has assigned to
12 CloseCall's account, Mary Maher and Julius Bradley, prior to filing her
13 statements with the Commission. CloseCall has documented
14 communications in which Verizon specifically refuses CloseCall's request
15 for access to Line Sharing DSL, the only cost-efficient high-speed Internet
16 access service for most residential consumers, and admits to doing so in
17 order to disadvantage its competitors. That documentation is included as
18 Attachment C to this Surrebuttal. In light of Verizon's explicit refusal to
19 comply with state and federal laws that require it to cooperate with its
20 competitors in a manner that promotes healthy local competition,
21 CloseCall had no recourse but to file its Complaint with the Commission.

22

1 Q. WHY IS MS. CLAYTON WRONG TO STATE THAT "BY USING
2 VERIZON'S DRL SERVICE AND PARTNERING WITH AN EXISTING
3 ISP, SUCH AS EARTHLINK, CLECs LIKE CLOSECALL CAN PROVIDE A
4 BUNDLED DSL/INTERNET ACCESS PRODUCT TO THEIR END-USER
5 CUSTOMERS?"

6 A. Verizon's recommendation that CloseCall should "partner" with an Internet
7 service provider ("ISP") in order to provide local telephone service to
8 customers subscribing to Verizon Line Sharing DSL service is
9 unreasonable and contrary to the local competition provisions of the
10 Telecommunications Act of 1996, which allows new entrants to choose the
11 manner in which they enter the local telecommunications market.
12 Moreover, this statement is nothing more than an attempt to direct the
13 Commission's attention away from the matter at hand. Verizon's
14 anticompetitive practice of blocking CloseCall's ability to fulfill customer
15 orders for local telephone service would not be affected by any
16 modification to CloseCall's business plans as it is solely the product of
17 Verizon's strategic plan to abuse its position as the gatekeeper to the local
18 network in order to protect its local service market position. The decision
19 to provide Internet access services would not affect in any way CloseCall's
20 ability to execute an order instructing Verizon to switch a residential
21 consumer or small business customer from Verizon's local telephone
22 service to CloseCall's local telephone service.

23

1 Verizon's attempt to argue that CloseCall's focus on the local telephone
2 market somehow justifies Verizon's decision to refuse to comply with
3 CloseCall's telephone service provider change orders is nothing more
4 than a ruse. CloseCall's decision to change its business plan or to offer
5 high-speed Internet service, or any other product or service, is an internal
6 business planning issue and of no concern or relevance to Verizon.
7 Verizon's discussion of this issue is designed to serve no purpose other
8 than to redirect the Commission's attention away from the real issue at
9 hand: the arbitrary policies and rules that Verizon imposes upon its
10 competitors in order to thwart local competition and preserve its market
11 dominance. Specifically, Verizon has made the strategic choice to tie its
12 provision of an "unregulated" service to "regulated" local telephone service
13 in order to block CloseCall's ability to compete to provide local telephone
14 service to customers in Maryland and to sell more "unregulated" services.
15 That activity is anticompetitive and contrary to the public interest. Despite
16 the creativity of its arguments and suggestions regarding CloseCall's
17 business decisions, Verizon's suggestion that its anticompetitive policies
18 are somehow responsive to CloseCall's strategic relationships is a red
19 herring and contributes nothing toward the resolution of CloseCall's
20 legitimate grievances.

21
22 Q. IS MS. CLAYTON CORRECT WHEN SHE STATES "AS AN
23 ALTERNATIVE, RESELLERS SUCH AS CLOSECALL CAN

1 THEMSELVES GO INTO BUSINESS AS ISPs AND PROVIDE
2 DSL/INTERNET ACCESS SERVICE TO THEIR END-USERS OVER
3 THEIR RESOLD LINES?"

4 A. No. Requiring CloseCall to become an ISP would have no effect on
5 CloseCall's ability to sell local telephone service to Maryland residential
6 consumers and small businesses. Verizon's suggestion that CloseCall
7 should become an ISP in order to sell local telephone service is nothing
8 but a red herring created by Verizon in order to draw attention from its
9 unfair and anti-competitive practice.

10

11 Q. WHY WOULD VERIZON TIE ITS PROVISION OF LINE SHARING DSL
12 AND INTERNET ACCESS SERVICES TO ITS PROVISION OF LOCAL
13 TELECOMMUNICATIONS SERVICES?

14 A. In my opinion and experience, Verizon is utilizing a strategy similar to that
15 which it is using for voice messaging. Specifically, Verizon is attempting
16 to "trap" local telephone service customers by requiring them to give up
17 their existing advanced telecommunications services in order to enjoy the
18 benefits of local telephone service competition. Verizon is undertaking
19 this strategy in order to guarantee its dominant market position and to
20 handicap its competitors.

21

1 Q. IS CLOSECALL FAMILIAR WITH USING VERIZON'S URL (WEBSITE)
2 TO DOWNLOAD SPECIFIC INFORMATION ABOUT VERIZON
3 POLICIES, PRACTICES, CONTRACTS AND PRICING?

4 A. Yes. Contrary to Ms. Clayton's remarks, CloseCall is very familiar with
5 this Verizon procedure and uses it frequently to gain information and make
6 its current and future business decisions.

7

8 Q. IS MS. CLAYTON CORRECT THAT, "MR. MAZERSKI PROVIDES NO
9 DETAIL IN HIS TESTIMONY TO SUPPORT HIS ASSERTION THAT THE
10 CAPITAL OUTLAYS REQUIRED FOR CLOSECALL TO BEGIN
11 PROVIDING DSL-BASED INTERNET ACCESS WOULD COME EVEN
12 REMOTELY CLOSE TO 'HUNDREDS OF MILLIONS' OF DOLLARS?"

13 A. No. As I noted in my testimony, my experience with Verizon and their
14 plans for DSL deployment clearly leads me to such a conclusion. In
15 addition, in response to CloseCall's interrogatories Verizon reported that it
16 had capital expenditures alone in Maryland from 1998 to present 2002 of
17 **BEGIN PROPRIETARY [] END PROPRIETARY** for providing DSL
18 transport. Clearly I will stand by my statement of the amount of money
19 required for new capital investment in personnel and facilities for
20 CloseCall to provide Line Sharing DSL on its own.

21

22 Q. DO YOU AGREE WITH MS. CLAYTON'S ANSWER OF NO TO HER
23 OWN QUESTION, "IS MR. MAZERSKI CORRECT WHEN HE STATES

1 THAT VERIZON REFUSES TO SWITCH A CUSTOMER'S LOCAL
2 TELEPHONE SERVICE TO A COMPETITOR, SUCH AS CLOSECALL, IF
3 THAT CUSTOMER HAS LINE-SHARING DSL SERVICE?"

4 A. No. Ms. Clayton appears to be mincing words here in an attempt to justify
5 Verizon's anti-competitive "tie-in" practice. Although Ms. Clayton answers
6 this question no, she adds the caveat that "before those customers can
7 switch to a CLEC for voice service, they must go through the procedure of
8 canceling the DSL/Internet Access they purchase from their ISP, because
9 they must switch from a DSL/Internet Access service based to one based
10 on DRL, which is Verizon's wholesale DSL product designed for use over
11 resold lines." Ms. Clayton then admits that, "the requirement has the
12 effect of providing notice to the end-user that switching to the CLEC for
13 voice service will result in a brief interruption in its DSL service." Ms.
14 Clayton attempts to argue that this service interruption would somehow
15 benefit customers by providing "the ability to plan ahead," apparently for
16 an unwarranted, unwanted, and potentially interminable interruption of
17 Internet access service.

18

19 Q. DO MS. CLAYTON'S STATEMENTS CLEARLY DEMONSTRATE THAT
20 VERIZON IS WILLING TO USE OF ITS MARKET POWER TO
21 RESTRAIN CLOSECALL'S ABILITY TO SELL LOCAL TELEPHONE
22 SERVICES IN MARYLAND?

1 A. Yes. Verizon's demand that CloseCall must become an ISP or partner
2 with an ISP in order to sell local telephone services in Maryland is anti-
3 competitive, discriminatory and contrary to the Telecommunications Act of
4 1996. In addition, Verizon's requirement that customer's must first suffer a
5 service disruption in order to switch their local telephone service from
6 Verizon to CloseCall is equally anti-competitive and discriminatory and
7 illustrates Verizon's callous attitude toward consumer welfare and the
8 public interest. Ms. Clayton's statement that intentionally causing a
9 service disruption is somehow a good thing for the customer (by providing
10 the customer with "time to plan") is an absurd concept.

11
12 Ms. Clayton also fails to note that Verizon offers annual contracts for its
13 high speed Internet access service that uses Line Sharing DSL. In
14 combination with Verizon's anticompetitive bar to competing local
15 telephone companies from providing service to Verizon customers
16 subscribing to its Line Sharing DSL services, these term contracts enable
17 Verizon to "trap" customers into using Verizon's local telephone service for
18 a full year. This alarming combination prohibits customers from switching
19 to an alternative local telephone service providers, such as CloseCall.
20 The Commission should also note that Verizon has not filed the proper
21 Tariff changes in its local telephone service Tariff No. 202, thereby
22 circumventing the Commission's scrutiny and the opportunity for
23 interested parties to comment on this policy. Clearly Verizon has

1 developed and implemented a convoluted process that "ties-in" the
2 "unregulated" high speed internet (DSL) service with their "regulated" local
3 telephone service to "trap" unwitting customers and create impassable
4 barriers to entry for CloseCall into the Maryland local telephone market.

5

6 Q. WHAT HAPPENS IF A VERIZON LOCAL TELEPHONE CUSTOMER
7 THAT ALSO IS SUBSCRIBING TO VERIZON'S HIGH SPEED INTERNET
8 (DSL) SERVICE USING LINE SHARING DSL CALLS VERIZON AND
9 DEMANDS THAT THEIR LOCAL TELEPHONE SERVICE BE SWITCHED
10 TO CLOSECALL?

11 A. Verizon tells the customer that it will terminate their high speed Internet
12 (DSL) service. If the customer has been a subscriber for less than one
13 year, Verizon also tells the customer they will be billed an equipment fee
14 of \$125 plus, must return their DSL modem to Verizon and that they will
15 also be charged a \$100 termination fee.

16

17 Q. DO THE PRACTICES AND POLICIES DESCRIBED IN MS. CLAYTON'S
18 TESTIMONY MAKE ANY SENSE FOR MARYLAND RESIDENTIAL
19 CONSUMERS AND SMALL BUSINESS CUSTOMERS?

20 A. No. The Commission needs to step in and stop these practices. Clearly
21 Ms. Clayton and Verizon have built huge barriers to entry for CloseCall
22 and expect to benefit from those anticompetitive market barriers with
23 impunity.

1

2 Q. AS MS. CLAYTON STATES, DID YOU SUGGEST THAT, "DSL, DRL
3 AND DSL-BASED HIGH SPEED INTERNET ACCESS ARE
4 INTRASTATE PRODUCTS AND SUBJECT TO THE REGULATION OF
5 THIS COMMISSION?"

6 A. No. I clearly understand which jurisdictions are responsible for regulating
7 which products. Verizon, Verizon Data Services, Inc. and Verizon
8 Advanced Data, Inc. are all successors to Bell Atlantic, which was the
9 successor to C&P. These entities operate as public utilities under
10 authority originally granted by the Commission to C&P and its
11 predecessor. Consequently, all of these entities have submitted to the
12 Commission's jurisdiction with respect to the goods and services that they
13 provide in Maryland. The fact that the Commission has jurisdiction over
14 these entities for the purpose of protecting the public interest does not
15 affect the FCC's classification of certain services as intrastate or interstate
16 for other regulatory purposes, such as the assessment and allocation of
17 Universal Service funds.

18

19 By the same token, the fact that the FCC classifies these as interstate
20 services does not diminish the Commission's authority over the local
21 public utilities providing these services in Maryland. Consequently, the
22 Commission has sufficient authority, as well as the obligation, to direct
23 Verizon to abandon its anticompetitive practice of tying voice messaging

1 and Line Sharing DSL service to its local telephone service. Moreover,
2 since the FCC has little jurisdiction over local telephone service, which is a
3 strictly intrastate matter, the Commission is the only entity that has the
4 authority to resolve CloseCall's complaint.

5

6 Q. DO YOU AGREE WITH MS. CLAYTON THAT, "VERIZON'S POSITION
7 IN THIS PROCEEDING IS CONSISTENT WITH THE PENNSYLVANIA
8 AND CONNECTICUT SECTION 271 PROCEEDINGS," AS MENTIONED
9 IN MR. MAZERSKI'S TESTIMONY?

10 A. No. What I pointed out in my testimony was the fact that the FCC
11 endorsed the provisioning of DSL service on loops used by Verizon's
12 competitors to provide local exchange services in Connecticut and
13 Pennsylvania. In so doing, the FCC held that enabling competitors to
14 provide resold line-sharing DSL service to their voice subscribers over a
15 single loop would benefit consumers by expanding competition in the
16 provision of advanced services. This is a positive development. However,
17 as previously discussed, Verizon's distorted and anti-competitive
18 interpretation of this endorsement is the basis for CloseCall's complaint.

19

20 Q. SHOULD THE COMMISSION ORDER VERIZON TO STOP THE
21 PRACTICE OF BLOCKING CLOSECALL'S LOCAL TELEPHONE
22 ORDERS FROM RESIDENTIAL CONSUMERS AND SMALL
23 BUSINESSES JUST BECAUSE THEY ALSO PURCHASE VERIZON

1 HIGH SPEED INTERNET ACCESS SERVICE USING LINE SHARING
2 DSL?

3 A. Yes.

4

5 Q. SHOULD THE COMMISSION ORDER VERIZON TO ENSURE THAT
6 VERIZON WILL EXECUTE ORDERS DIRECTING IT TO MIGRATE
7 CUSTOMERS TO CLOSECALL'S LOCAL TELEPHONE SERVICE IN A
8 SEAMLESS MANNER AND WITHOUT CAUSING SERVICE
9 INTERRUPTIONS, EVEN THOUGH THE CUSTOMER IS ALSO
10 PURCHASING FROM VERIZON HIGH SPEED INTERNET ACCESS
11 SERVICE USING LINE SHARING DSL?

12 A. Yes.

13

14 Q. SHOULD THE COMMISSION ORDER VERIZON TO CONTINUE
15 PROVIDING THE HIGH SPEED INTERNET SERVICE TO CUSTOMERS
16 THAT SWITCH THEIR LOCAL TELEPHONE SERVICE TO
17 CLOSECALL?

18 A. Yes. Verizon should be prohibited from using the fact that a customer
19 switched their local telephone from Verizon to CloseCall as an invitation to
20 strong-arm customers with threats, the termination of high speed Internet
21 service, high service termination fees, the sudden repossession of DSL
22 modems, or additional equipment fees. The Commission must remove
23 these barriers to local market entry.